IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 1059

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

CHESTER RAILING and PAUL RAILING, d/b/a C & P COAL COMPANY, *Respondents*

OBJECTION OF RESPONDENTS TO THE PETITION FOR WRIT OF CERTIORARI

WILLIAM G. JOHNSON
Clarksburg, West Virginia

JOHN A. ROWSEY
1412 Hamilton Bank Building
Knoxville, Tennessee 37902

Attorneys for Respondents

Parks & Byrd Z. Adkins Printing, Inc., Washington, D. C.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
Both Courts Below Agreed That the Question of Accrual of the Action Is Governed by Federal Law	2
The Courts Below Pointed Out the Difficulties Confronted by Plaintiffs in Secondary Boycott Cases in Determining Questions Relating to Purposes and Causation	3
Railings Seek To Amend Their Claim To Assert That the Complained-Of Activities Were Instigated by Purposes and Agreements Violating Antitrust Laws. This Amended Claim, If Allowed and Proved, Would Make the Statute of Limitations the Federal Four-Year Statute	4
ARGUMENT	10
A. This Case Must Be Remanded Since This Appeal Covers Only a Part of the Case and On the Remand the Motion To Amend To Assert An Antitrust Claim Should Be Allowed and This Would Make the Statute of Limitations Question Unimportant	10
B. The Ruling of the Fourth Circuit Was Sound and Does Not Conflict With *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, Or Any Prior Decision	11
CONCLUSION	13
APPENDIX A: Application for Permission To Respond To Petition for Rehearing and Permission To Amend the Complaint	1a

Page

INDEX OF CITATIONS

Blue Diamond Coal Company v. United Mine Workers, U. S. District Court for the Eastern District of Tennessee, Northern Division, Civil Docket No. 6189, tried January, 1970 ..... 5, 9

Ramsey, et al. v. United Mine Workers of America, U. S. Supreme Court, No. 88, October Term 1970, argued December 7, 1970 11

UAW v. Hoosier Cardinal Corp., 383 U.S. 696 ..... 11, 12

United Mine Workers of America v. Tennessee Consolidated Coal Co., U. S. Supreme Court, No. 1163 October Term 1969 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1059

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

CHESTER RAILING and PAUL RAILING, d/b/a C & P COAL COMPANY, *Respondents*

OBJECTION OF RESPONDENTS TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This is one of twelve (12) cases (see list, pages 22-23 of the Petition) brought by small coal operators and coal truckers situated above Flemington in northern West Virginia after petitioner, United Mine Workers of America (UMW), established picket lines and closed operations in that vicinity commencing in April 1968. Respondents (Railings) sued UMW under Section 303 of the Labor Management Relations Act (29

U.S.C. 187) claiming their business was damaged by UMW secondary boycott activities. They also sued on common law claims under the doctrine of pendent jurisdiction for compensatory and punitive damages arising from alleged violent interference with their business.

The case was filed on June 28, 1961 in the United States District Court for the Eastern District of Kentucky, but UMW obtained a transfer of these actions to the Northern District of West Virginia under 28 U.S.C. 1404(a). UMW examined the Railings on depositions, then filed motions to dismiss and other motions. *On October 28, 1967 the District Court sustained part of the motions and stayed further proceedings and trial pending this appeal.* This appeal has to do with that part of the District Court's rulings which dealt with the time of the accrual of the Section 303 claim, which would commence the running of the West Virginia statute of limitations of two (2) years (West Virginia Code 55-2-12), there being no statutory period designated by Federal law for Section 303 actions.

Both Courts Below Agreed That the Question of Accrual of the Action Is Governed by Federal Law

West Virginia Code 55-2-12 provides that personal actions not having any other designated limitation period shall be brought within two years "after the right to bring the same shall have accrued."

The UMW petition recognizes that the District Court considered and decided the "accrued" question after finding itself "faced with the necessity of fashioning 'from the policy of our national labor laws' a rule of decision to be applied in determining the time within

which the liability created by Section 303 'accrues'." The District Court pointed out (Appendix to the Petition, p. 5a) ". . . The determination of the time of the accrual of a cause of action to enforce a federally-created right is a federal question." The District Court appropriately turned to federal cases to decide the question, but ended up with a conclusion which is the one unclear point in an otherwise very thoughtful, thorough and clearly expressed opinion (top of page 8a of Appendix to the Petition). The Court acknowledged in such a case as this "Determining the actual cause, and the date thereof, of a particular loss . . . would normally be impossible . . . ", and for this very reason the Court held the accrual should be accelerated, rather than postponed, until that which normally would be impossible to determine might have a better chance to be learned and the causation fixed.

The Court of Appeals disagreed and held that, for the very difficulty pointed out by the District Court, in such an action as this the "action accrues on the last date of continuing illegal conduct for purposes of application of a state statute of limitations." (Appendix to Petition, p. 39a).

The Courts Below Pointed Out the Difficulties Confronted by Plaintiffs in Secondary Boycott Cases in Determining Questions Relating to Purposes and Causation

As stated above, the crucial consideration in the District Court opinion was the fact that in such cases as this it is normally impossible to ascertain questions of causation. Much of the difficulty arises from the establishment of purposes behind the conduct complained of which "were not confined solely to the premises of the plaintiff's operations, but extended to the mining oper-

ations of several companies in the area as well as to several trucking concerns". (Appendix to Petition, p. 18a). The District Court proceeds to point out in detail for several pages the "formidable problem requiring distinctions 'more nice than obvious' with respect to the nature and intent of acts performed by or in behalf of the defendant union."

In all of this, of course, the plaintiff is not posted on the plans and purposes of the union. As the District Court points out (p. 14, Appendix to Petition), all the information the union furnished the plaintiff is an ultimatim: "The union representatives handed Chester Railing a standard United Mine Workers contract and told him to sign it. Upon his refusal, he was told that he would either sign the contract or he 'would never load another ton of coal.' "

Railings Seek To Amend Their Claim To Assert That the Complained-of Activities Were Instigated by Purposes and Agreements Violating Antitrust Laws. This Amended Claim, If Allowed and Proved, Would Make the Statute of Limitations the Federal Four-Year Statute

In the Court of Appeals, Railings filed an application to amend the complaint to assert that the complained-of activities were instigated by purposes and agreements violating antitrust laws. The Court of Appeals did not allow the amendment but, in the order filed September 8, 1970, said that the amendment should first be presented to the District Court. We are advised that this application and the order thereon are part of the record transmitted to this Court. The application to amend is made Appendix A at the end of this brief. Parts II, III and IV of said application pertain to this amendment.

Of course, if the amendment is allowed and proved on the trial of this case, then the statute of limitations would be the federal four-year statute provided for antitrust cases (15 U.S.C. 15b). The four-year period would encompass all of the acts complained of and all of the damages sought.

The reason that respondents seek to amend their complaint to assert an antitrust claim for the same activities complained of in the original complaint is that since the stay of proceedings after the preliminary motions and the order of the Court thereon, new facts have been discovered with respect to the purposes and agreements behind the activities of the UMW and its intensified efforts to bring the smaller elements of industry under the national contract in the period of 1958 and into the 1960's. These new facts are more fully developed in *Blue Diamond Coal Company* v. *United Mine Workers*, Civil Docket No. 6189, in the United States District Court for the Eastern District of Tennessee, Northern Division, than in any other case. In that case, tried in January, 1970, the jury found that UMW had conspired with major companies in violation of the Sherman Act but the plaintiff had not been injured in its business or property by reason thereof. There was no appeal. However, the factual development of the conspiracy behind the efforts to force the contract into all portions of the industry in 1958 and later years is more fully developed there than in previous cases which do not have the benefit of the minutes of coal associations and the joint industry contract committee established under the national contract.

It is necessary that we describe the sort of new facts that respondents have become aware of and will allege

in seeking the amendment, since it is important in considering granting review at this stage of the case whether the antitrust amendment will likely be granted and proved. The present head of Bituminous Coal Operators Association (BCOA), Mr. Joseph Moody, has testified with respect to the demands by the members of the major coal associations that there be something done about the competition from the companies who were not producing coal under the national contract, this concern becoming intense in the years before 1958 and Mr. Joseph Moody, then head of Southern Coal Producers Association, testified in the Blue Diamond case that there were demands by the coal company members of the association that the associations do something about this. He testified:

> "And I discussed it with Mr. Lewis. He was not very sanguine at the time, mainly because he didn't see just how it could be done.
>
> "Well, I talked to him a couple of times more and said that I thought that it would give a central place of consideration of administration and would be helpful. And I mentioned to him this problem, that my people were becoming very adamant on their demand that something be done about the non-contract coal. And I don't know the time factors in here, but at another meeting it was talked about and there was one day I was over talking with Mr. Lewis and he showed me two papers which purported to be what we later called a protective wage clause—in other words a protection of the contract operators. One of them was in left field and one of them was in right field. But I did take them and brought them up here—not to this place, but to our counsel—
>
> "MR. POWELL (Counsel for the witness): May I inquire—the two documents you referred to, did Mr. Lewis identify them to you?

"THE WITNESS: The Welly Hopkins (UMW counsel) and the Ed Fox (president of BCOA).

"BY MR. ROUNTREE:

"Q. Do you have copies of those documents?

"A. No. They probably went with the records.

"Q. Can you recall what the basic approach of each one was?

"A. Well, the basic approach of each one was the same. It was to work out some method of closer cooperation by contract operators. However, their approach to the thing was wide open and I have forgotten the differences on the thing. That is why I was hesitant about discussing the matter. But I brought it to counsel and asked them, one, for advice of counsel on the legality of such a thing and, two, would they redraft it to see if they could bring up something that was bright-eyed and shiny, because Mr. Lewis said, 'If you have any bright ideas let's see how smart you are.' My memory is that is what happened. And we brought them back and the protective wage clause that was put into the contract was pretty much what was written in this law office, including the licensing and so forth that went with it."

Mr. Moody reported to the Board of Directors of Southern Coal Producers Association as to the reason why the Protective Wage Clause was being put into the contract in the following language:

"In the promulgation of this contract over the years, and especially in the past 10 years, we have established a wage situation whereby most operators and industry as a whole, had to go to general mechanization of their operations because of the very high cost of labor. In so doing, in the case of the coal industry, there was a major decrease in the number of employees and, according to the Bureau of Labor Statistics, there was a drop from 400,000 to less than 200,000.

> "There has been a major increase in the number of pensioners. Many miners left the coal fields, but many have returned and many never left and so we find a surplus of labor throughout the coal fields. The law of supply and demand took over and we discovered that the labor price established by the contract was not the price established by the number of miners available for work. This situation encouraged the establishment of mines, not under the union contract. This also presented the Union with a problem, as they found men who were members of the United Mine Workers, effectively opposing interference with their noncontract operations in order to hold their jobs. Therefore, the Union found it was unable to carry out major organizing campaigns. Lastly the coal market was rather seriously weakened as far as price was concerned as there was a premium on noncontract, low-priced coal." (Minutes of the Board of Directors of Southern Coal Producers Association, meeting of December 3, 1958, on file in the Blue Diamond case with the Moody deposition).

The Court already has a record in a related case, *United Mine Workers of America* v. *Tennessee Consolidated Coal Co.,* October Term, 1969, No. 1163, which discloses how closely the heads of BCOA, the Southern and Illinois Associations and the UMW officers, as members of the Joint Industry Contract Committee under the Protective Wage Clause, worked in going after the companies that did not observe the national contract, and the making of formal determinations and blacklistings against hundreds of companies that refused to send back certifications of compliance with the national contract. The record in that Case No. 1163 of the October 1969 Term, pages 418-9, 423-4, 467-8, 470-1, shows that approximately 1328 coal operators across the country were thus formally determined to be in violation and blacklisted.

However, a contest in the NLRB Case 5-CE-6 over the validity of the boycott in Paragraph B of the Protective Wage Clause was long and drawn out.

In the 1964 amendment to the National Bituminous Coal Wage Agreement, the Protective Wage Clause was eliminated, or so the union contends. A provision was inserted, however, whereby operators agreed to payment of a welfare fund royalty of eighty cents per ton in lieu of forty cents per ton, upon all coal purchased by the signatory operators that was not produced in compliance with the national contract.

A short time before the foregoing "eighty cent clause" of the April, 1964, amendment was put into the national contract, Mr. Fox (then head of BCOA) wrote a letter to Mr. Hamilton (head of Island Creek Coal Company, the largest company in the Southern Coal Producers Association) in March, 1964 which letter is included in the record in the above referred to *Blue Diamond Coal Company* case, and that letter reads as follows:

> "Thank you very kindly for your letter of March 10, 1964. The matter of the competition of those in the bituminous industry who are non-signators to the National Bituminous Coal Wage Agreement and thereby not obligated to pay a higher wage scale and the 40¢ royalty has been discussed on many occasions with the United Mine Workers. I hope that my presentations and the presentations of others in the industry to the officials of the United Mine Workers of America will make them appreciate the seriousness of this situation, not only to the coal companies, but to the United Mine Workers of America as well. It is most difficult to meet any demands made by the Mine Workers when there is a lack of opportunity to increase the price of coal to meet these demands."

So a lot more is known by respondents about the purposes and intents of UMW conduct, and who was behind it, in the period of 1958-1959, than they knew before UMW took the depositions in this case preliminary to the motions which have tied up the case since that time. Respondents intend to make this motion in the District Court when the case is remanded since the Court of Appeals has stated that it should be presented to the District Court first. There must necessarily be a remand since the motions with which this appeal is concerned pertain to only portions of the case.

ARGUMENT

A.

This Case Must Be Remanded Since This Appeal Covers Only a Part of the Case and on the Remand the Motion To Amend To Assert an Antitrust Claim Should Be Allowed and This Would Make the Statute of Limitations Question Unimportant

As stated above, the respondents have made application in the Court of Appeals to amend their complaint to charge an antitrust conspiracy and combination which would make the four-year federal statute in 15 U.S.C. 15b applicable and thus the statute of limitations would become unimportant. The Court of Appeals has responded in the order of September 8, 1970, that this application to amend should first be presented to the District Court on the remand. The application filed in the Court of Appeals is attached as Appendix A to this brief.

It is submitted that there is no sound reason why this motion to amend should not be allowed in the District Court because of the reasons stated in the paragraphs immediately above in the Statement of the Case. There is no change in the allegations with respect to

the activities complained of. The change is with respect to the purposes and understanding that lay behind those activities and respondents had no opportunity to know what was going on until after the taking of the depositions of the respondents by the UMW and the motions filed by UMW with the resulting order which has stayed further proceedings in this case.

The new information available has been included in part in the Appendix to the Reply of Petitioners to the Brief of the Bituminous Coal Operators Association, amicus curiae, in Case No. 88, October Term 1970, *Ramsey, et al.* v. *United Mine Workers of America,* which was argued in this Court on December 7, 1970. This information which was first brought to light in a 1969 case, as stated above, shows that the major coal associations became greatly concerned about the competition from coal being produced not under the national contract and with great insistence brought about the fashioning of the Protective Wage Clause, clearly showing that the purpose was to eliminate competition from those areas which were producing coal not under the national contract terms. The device was an anti-competitive device insisted upon by the coal associations.

B.

The Ruling of the Fourth Circuit Was Sound and Does Not Conflict With UAW v. Hoosier Cardinal Corp., 383 U.S. 696, or Any Prior Decision

Both lower Courts in this case were seeking to fashion federal law with respect to a federally-created cause of action as to when the cause should "accrue" for purposes of application of a state statute of limitations.

The lower Courts differed over the time when such cause of action should be held to accrue for the purposes of starting the statute of limitations period provided in a state statute. But the basic question was when, under federal law, the cause of action accrues. State law could not determine this question and allow the kind of uniformity which is desirable in national labor policy.

Because of the difficulties in ascertaining causation, purpose and intent in secondary boycott cases, the District Court thought that the accrual should be accelerated. For these very reasons, the Court of Appeals thought that the accrual should be postponed so long as the continuing illegal conduct put the plaintiff at a disadvantage in determining questions of causation, purpose and intent. We believe that the Court of Appeals' decision is the more sound. It will also promote greater uniformity since the application of extremely short state periods of limitation will not deprive litigants of their remedies under the federal law.

The majority decision of this Court in *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, said in note 9 at page 707:

> "Other questions would be raised if this case presented a state law characterization of a Section 301 suit that reasonably describes the nature of the cause of action, but required application of an unusually short or long limitation period."

It is believed that a rule which promotes uniformity in the face of unusually short or long limitation periods of state statutes would be desirable. Certainly the reasoning of the dissenting opinion in *Hoosier*

would support the establishment of a rule with respect to the accrual of secondary boycott claims that would promote maximum uniformity in the enforcement of Section 303 remedies.

CONCLUSION

For the reasons herein discussed, respondents submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM G. JOHNSON
Clarksburg, West Virginia

JOHN A. ROWNTREE
1412 Hamilton Bank Building
Knoxville, Tennessee 37902

Attorneys for Respondents

APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12,723

CHESTER RAILING and PAUL RAILING, D/B/A C & P COAL COMPANY, *Plaintiffs-Appellants,*

v.

UNITED MINE WORKERS OF AMERICA, *Defendant-Appellee.*

APPLICATION OF PLAINTIFFS-APPELLANTS FOR PERMISSION TO RESPOND TO THE PETITION FOR REHEARING IN BANC AND FOR PERMISSION TO AMEND THE COMPLAINT

I. THE MAJORITY OPINION OF THIS COURT DEMONSTRATES ITS SOUNDNESS WITHOUT ANY RESPONSE FROM PLAINTIFFS-APPELLANTS AS TO THE SECTION 303, FEDERALLY CREATED CLAIM FOR SECONDARY BOYCOTT DAMAGES

Plaintiffs-Appellants submit that the majority opinion filed herein on July 17, 1970, amply demonstrates in its reasoning that it is based upon proper and sound authority, and, contrary to UMW's present contentions, it will promote maximum uniformity in labor law application by applying federal law in determining when the federally created cause of action matures or must be brought.

II. THE FIFTH POINT MADE IN THE PETITION TO REHEAR POINTS UP THE APPLICABILITY OF STATE RULES AS TO THE STATE CREATED CLAIM (THE PENDENT JURISDICTION CLAIM) FOR CONSPIRATORIAL, WILLFUL AND COERCIVE ACTIVITIES. THIS GIVES PLAINTIFFS-APPELLANTS CONCERN

The fifth argument in the Petition for Rehearing (Pages 8-9) points up the applicability of state limitations rules

as to when the state created claim for conspiratorial and coercive activities of UMW must be sued upon. This point, if correct, would possibly raise a plethora of statute of limitations problems at the trial and, depending on the trial judge's reaction, could conceivably wipe out much of the benefit plaintiffs-appellants might have from the common law conspiracy claim under the principle of pendent jurisdiction. This claim was asserted in paragraphs 11, 12 and 13 of the complaint. This contention gives us much concern as far as the later trial is concerned, although it seems difficult to reason that this argument gives any grounds for a rehearing in this Court.

III. Plaintiffs-Appellants Desire To Amend the Common Law Conspiratorial Claim To Make It a Sherman Act Conspiracy Claim (in Line With a Case Dealing With the Same Kind of UMW Activities Pending in the Supreme Court To Be Argued This Fall)

The amendment sought by Plaintiffs-Appellants would replace the common law conspiracy claim in the complaint with a Sherman Act conspiracy claim, seeking to recover damages under 15 USC Sections 1 and 15 for the same UMW activities as have aleady been sued for.

The legal basis for such a Sherman Act claim for UMW activities of the same kind in the same period of time with respect to other small coal companies in other fields has been litigated in other cases. The first of these, a case that was filed in 1958, proved unsuccessful. *Pennington* v. *Lewis,* et al, (6th Cir., 1968) 400 F.2d 806, cert. den. (U.S.Sup.Ct., 1968) 393 U.S. 983. But recently and since the argument of this case, this theory of UMW purpose for the broad assault on small coal companies in 1958-1964 which eliminated many of them as competitors has been adjudicated to a favorable conclusion. *Tennessee Consolidated Coal Company* v. *United Mine Workers,* 416 F.2d 1192 (6th Cir., 1969), cert. den. (U.S.Sup.

Ct., 1970) —— U.S. ——, 25 L.Ed.2d 256. In addition, an adverse decision filed just prior to the last case cited by an equally divided Sixth Circuit sitting in banc will be reviewed this Fall by the Supreme Court. *Ramsey, et al.* v. *United Mine Workers,* (6th Cir., 1969), 416 F.2d 655, cert. granted (U.S.Sup.Ct., 1970) —— U.S. ——, 25 L.Ed. 2d 419.

IV. Reasons Why Plaintiffs-Appellants Desire To Amend the Complaint

(a) We have pointed out above our concern that the common law conspiracy claim *may* be of little value *at the trial* by reason of the point made under the fifth argument in the Petition for Rehearing.

(b) Our concern for the other claim in the complaint, the secondary boycott claim, arises from comments made in the Trial Court's Opinion. The Trial Court pointed out (276 F.Supp. 238 at 247-250) the difficulties plaintiffs-appellants will have at the trial in carrying the burden of proving the state of mind UMW was in when it did the things which damaged them—was UMW intending pressure upon the immediate victims to be secondary or primary pressure? That state of mind, purposes and motives of UMW were known to it but not to these plaintiffs when these things were done. Plaintiffs have only recently, and actually only since the decision of this Court, learned of the evidence that shows purposes and motives to restrain the competition of the smaller mines, and which establishes a Sherman Act case.

(c) The amendment would pertain to UMW's purposes and motives for doing the things for which the suit was originally brought and upon which the claim for damages would continue to be based. The amendment would relate back to the date of the original complaint (Rule 151[c], Federal Rules of Civil Procedure) and the statute of limitations problem would be eliminated since the Sherman

Act case has a federally established four-year period (15 USC Section 15b).

(d) Rule 15 of Federal Rules of Civil Procedure provides as to applications for amendments "leave shall be freely given when justice so requires." Justice would seem to require that when proof of a defendant's state of mind is material to a claim and plaintiff is prompt in seeking amendment after becoming aware of such proof, the obvious wrongs done the plaintiff should not go without a full remedy.

This type of amendment should be allowed after appeal from a summary judgment motion where there is a remand for trial. *Moore's Federal Practice,* Vol. 3, Section 15.11, pages 970-971, and also Section 15.09, page 947.

In *Tahir Erk* v. *Glenn L. Martin Co.,* 116 F.2d 865, this Court dealt with a motion to amend on an appeal, the amendment pertaining to the state of mind and purposes of defendant's alleged conduct, the allegation of purpose or motivation being material to the legal sufficiency of the cause of action. This Court said:

> "It is our considered opinion that the motion to dismiss for insufficiency is applicable, as general rule, only where it is clear and apparent to the court that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the specific claim."
>
> * * * * * * * * *
>
> "There has been no showing that the District Judge abused his exercise of discretion in refusing to grant leave to amend upon dismissing the plaintiff's complaint for insufficiency."
>
> * * * * * * * * *
>
> "However, inasmuch as we have reversed the lower court's judgment and overruled the motion to dismiss, we are of the opinion that the plaintiff should now

be given leave to amend his complaint. The history to date of practice under the Rules of Civil Procedure shows a strong liberality among District Judges in allowing amendments under Rule 15(a)."

* * * * * * * * *

"Upon inquiry from the bench of this Court, as to what plaintiff proposed to prove under the rather general allegation of his complaint, and at a suggestion from us, plaintiff proposed an amendment containing the following allegations: 'That the defendant, in sending said purported cancellation, did so with the intention to delay and hold off in closing the said sales contract or business subsequently entered and closed with the Republic of Turkey until after the said six and eight months period had run, for the purpose of fraudulently, wrongfully and in bad faith endeavoring to deprive the plaintiff of his just rewards and commissions under the said agency contract, and pursuant to said intention, did in fact so delay and hold off in closing the said sales contract of business with the Republic of Turkey.'"

* * * * * * * * *

"Counsel for defendant admits that the complaint as thus amended adequately states a claim; and it unquestionably makes more definite and certain the allegations which we have held sufficient. Its effect will be to narrow rather than to broaden the issues and its allowance can consequently work no injury to defendant. While we might allow the amendment here, we think it better practice to permit it to be made before the District Court in connection with further proceedings to be had upon the remand."

(e) The defendant-appellee, UMW, would not be prejudiced. The Sherman Act proof centers upon why UMW tried to force or forced its standard form of contract, without true bargaining, upon smaller companies. The above

cited *Pennington, Ramsey,* and *Tennessee Consolidated* cases started at approximately the same time as this case, and UMW has fully developed its defenses on this theory. In each case stipulations have been filed making admissible the Sherman Act proof developed in other cases and plaintiffs-appellants now offer to make such a stipulation in this case, an offer that would be binding in the Trial Court if the amendment is allowed.

(f) It is probable that with a favorable decision by the Supreme Court in *Ramsey* next Fall, the pleadings and theory as to UMW purposes can truly be simplified with issues greatly narrowed.

Respectfully submitted,

WILLIAM G. JOHNSON
Clarksburg, West Virginia

/s/ JOHN A. ROWNTREE
John A. Rowntree
1412 Hamilton Bank Building
Knoxville, Tennessee 37902